BEFORE THE STATE BOARD OF EQUALIZATION

OP THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 85R-786-VN
NICKOLAS AND MABEL E. KURTANECK)

For Appellant: Merlin W. Call
Attorney at Law

For Respondent: *Timothy* W. Boyer
Supervising Counsel

OPINION

This appeal is made pursuant to section 19057, subdivision (a),1/ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Nickolas and Mabel E. Kurtaneck for refund of personal income tax in the *amounts* of $293.73, $85.84, $231.43, and $278.07 for the years 1977, 1978, 1979, and 1980, respectively..

1/ Unless otherwise specified, all section references are *to* sections of the Revenue and Taxation Code as in effect for the years in issue.

Appeal of Nickolas and Mabel E. Kurtaneck

The issue presented for our decision is whether Nickolas and Mabel E. Kurtaneck, husband and wife, were entitled to exclude from their gross income a ministerial housing allowance received from Biola University for each of the four years in question. Since Mrs. Kurtaneck is a party to this appeal solely became she filed a joint return with her husband, only Nickolas Kurtaneck shall be referred to ad "appellant" in this opinion.

Appellant is an ordained minister who is employed as a senior pastor at the Grace Brethren Church of Norwalk, California. Pot the past 25 years, appellant has also been employed as a professor at Biola University, a Christian university in La Mirada. Specifically, he is a faculty member of the Talbot Theological Seminary and School of Theology (Talbot) which is a graduate school of divinity under the auspices of Biola University. Talbot offers eight advanced degree programs in Christian theological education, preparing its graduates for careers in church ministry. Through its Department of Biblical Studies, Talbot also provides courses in theology to undergraduate students vho often enter the ministry on graduation or matriculate to the graduate program at Talbot or other theological seminaries. Appellant teaches biblical studies to undergraduates in Talbot's Department of Biblical Studies.

Pot the appeal years 1 977, appellant received housing allowances from both the Grace Brethren Church and Biola University as part of his compensation. Appellant treated the allowances as parsonage allowances and excluded both amounts from his California grass income. On review, the Franchise Tax Board allowed the exclusion of the housing allowance received from Grace Brethren Church, but included in appellant's gross income the amount of parsonage allowance he received from Biola University. Appellant paid the resulting deficiency assessments and filed claims for refund. Respondent denied: the refund claims.

In this appeal, appellant argues that he should be allowed to exclude the parsonage allowance received from Biola University because said amount reoresented compensation for services as a minister at a&religious college. If is appellant's position that his teaching of biblical studies as a professor at Talbot constituted the exercise of his ministry. Whereas respondent's determination in regard to the imposition of tax is presumptively correct, appellant bears the burden of showing error in

that determination. (Appeal of K. L. Durham, Cal. St. Rd. of Equal., Mar. 4, 1980.)

Section 17141 provides, in part, that in the case of a minister of the gospel,[2] gross income does not include the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home. This statute is substantially similar to its federal counterpart, Internal Revenue Code section 107. Because of this similarity, the interpretations and effect given the federal provision by the federal administrative bodies and courts are relevant in determining the proper construction of the California statute. (Meanley v. McColgan, 49 Cal.App.2d 203, 209 [121 P.2d 45] (1942); Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955); see Appeal of John Z. and Diane W. Mraz, Cal. St. Bd. of Equal., July 26, 1976, and the cases cited therein,)

Treasury Regulation section 1.107-1, subdivision (a), states, in part, that in order to qualify for the parsonage allowance exclusion, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister and that, in general, the rules set forth in section 1.1402(c)-5 of the regulations will be applicable to such determination. As examples of specific services, the performance of which will be considered duties of a minister for purposes of the federal statute, the regulation cites the performance of sacerdotal functions; the conduct of religious worship; the administration and maintenance of religious organizations and their integral agencies; and the performance of teaching and administrative duties at theological seminaries,

Treasury Regulation section 1.1402(c)-5, subdivision (b)(2), provides, for purposes of exemption from the federal self-employment tax, a fist of the kinds of services on ordained minister performs in the exercise

2/ The phrase "minister of the gospel" applies to those individuals having ministerial status in their respective religions. (Boyer v. Commissioner, 69 T.C. 521, 529 (1977).) A "minister" is a person authorized to administer the sacraments, preach, and conduct worship services whereas "gospel" means a message, teaching, doctrine, or course of action having certain religious validity. (Salkov v. Commissioner, 46 T.C. 190, 194 (1966).)

of his ministry and suggests possible rules for determining whether particular services meet the criteria of the regulations. The tax court has concluded that these rules are a reasonable interpretation of the federal parsonage allowance section and should be used in analyzing whether an individual's service is performed in the exercise of his ministry; (Toavs v. Commissioner, 63 T.C. 897, 903 (1977).)

The kinds of services that a minister performs in the exercise of his ministry include "the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination." (Treas. Reg. § 1,1402(c):-5, subd. (b)(2).) The regulations then set forth five applicable tests for determining whether services performed by a minister are performed in the exercise of his ministry. Arguing that appellant must show Biola University to be an integral part of a particular religious organization before his rental allowance can be considered remuneration for services which are ordinarily the dutes of a minister, the Franchise Tax Board ostensibly contends that appellant must meet the fourth test. This test provides, in part, that, if a minister performs services for an organization which is operated is an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by him in the control, conduct, and maintenance of such organization is in the exercise of his ministry. (Treas. Reg. § 1.1402(c)-5, subd. (b)(2)(iv).) "Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith." (Treas. Reg. § 1.1402(c)-5, subd. (b)(2)(ii).) 'Whether a particular organization is an integral agency of a religious organization or is an independent institution can only be determined by examining all the attendant facts and circumstances. (Toavs v. Commissioner, supra, 67 T.C. at 904-905.)

Revenue Ruling 72-606, 1972-2 C.B. 78, lists the following criteria that the Internal Revenue Service

considers in determining whether a church-related institution is an integral agency of a religious organization: (1) whether the religious organization incorporated the institution: (2) whether the corporate name of the institution indicates a church relationship: (3) whether the religious organization continuously controls, manages, and maintains the institution; (4) whether the trustees or directors of the institution are approved by or must be approved by the religious organization or church; (5) whether trustees or directors may be removed by the religious organization or church; (6) whether annual reports of finances and general operations are required to be made to the religious organization or church; (7) whether the religious organization or church contributes to the support of the institution; and (8) whether, in the event of dissolution of the institution its assets would be turned over to the religious organization or church. The revenue ruling states that the absence of one or more of these characteristics is not necessarily determinative and, where application of the criteria to the facts of a particular case does not yield a clear answer, organizational authorities aie asked to comment whether the institution in question is an integral agency.

Furthermore, Revenue Ruling 70-549, 1970-2 C.B. 16, provides guidance as to how a college can satisfy the criteria of the Internal Revenue Service to become an integral agency of a "nonhierarchical church." (See Plowers v. United States, 49 A.F.T.R. 2d (P-H) ¶ 82-340 at 82-442.) Where a college is supported by a church lacking a central. governing body that exercises direct control over its institutions, Revenue Ruling 70-549 states that the college can nevertheless be as effectively controlled by the church through a board of directors whose members are required to be church members and which is controlled by church elders. Moreover, if all of its faculty and students are members of the church, subjects are taught with emphasis on religious principles, and ministers for the church receive training there, the college will be considered as having been operated, in practice, as an integral agency of the church and any minister serving on the faculty as a teacher or administrator will be able to exclude a rental allowance from his gross income.

In the present matter, appellant has not furnished any evidence regarding the legal connection between Biola University and a particular religious organization or the control or management of the univer-

sity, whether direct or indirect, by a particular church. Appellant has submitted seven letters written by pastors and administrators from various Southern California churches of different denominations, each certifying that Biola University, including Talbot Theological Seminary, is an integral agency of his church. However, the basis for that conclusion appears to be that many of the pastors of these churches received their ministerial training at Talbot and, therefore, Biola University was an important institution to these churches. Appellant's own Grace Brethren Church merely indicates that it provides financial support to Biola University, that a number of its congregation attend school there, and that several Biola students serve the church. While these Letters show that Biola University trains students for careers in the ministry and offers a source of clergy for several area churches, there is no evidence in the record to suggest that any particular church controlled or Managed Biola University, its graduate school of theology, its finances, faculty membership, student enrollment, or curriculum. Rather, the record appears to demonstrate that Biola University was an independent institution which provided instruction in theological and religious training to students representing a number of religious denominations. Three of the supporting letters, in fact, state outright that Talbot is not under the authority of their denominations and a flier submitted by appellant. describes Talbot as an interdenominational school,

Upon consideration of the evidence in the record, we must find that appellant has nat proven that either Biola University or Talbot was controlled or operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination. Accordingly, appellant, although a minister of the gospel, was not performing service in the exercise of his ministry while teaching at

Biola University and is, therefore, not entitled to exclude the rental allowance furnished to him as part of his compensation.[3] Therefore, respondent's action in denying the refund claims will be sustained.

3/ See Revenue Ruling 63-90, 1963-I C.B. 27, where the Internal Revenue Service held that ministers who held teaching or administrative positions in a religious organization, which was not an integral agency of a church but operated exclusively for religious purposes and devoted to providing religious training to students of various denomination, were not performing services as ministers of the gospel: compare Revenue Ruling 62-171, 1962-2 C.B. 39, where the federal tax agency reached the opposite result in the case of ministers who were employed as administrators and teachers of both religious and secular subjects by parochial schools and universities that were "integral agencies of religious organizations under the authority of a religious body constituting a church or church denomination."

Appeal of Nickolas and Mabel H. Kurtaneck

O R D E R

Pursuant to the views expressed in the opinion of the board, on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Nickolas and Mabel H. Kurtaneck for refund of personal income tax in the amounts of $293.73, $85.84, $231.43, and $278.07, for the years 1977, 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of May, 1987, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Dronenburg, Mr. Bennett, Mr. Carpenter and Ms. Baker present.

Conway H. Collis, Chairman

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

Paul Carpenter, Member

Anne Baker*, Member

*For Gray Davis, per Government Code section 7.9